

Remarks

Claims 1-43 are presented for the Examiner's review and consideration. In this response, claims 1, 8, 14, 29, and 43 are amended. Applicant believes the claim amendments and the accompanying remarks, herein, serve to clarify the present invention, and are independent of patentability. No new matter has been added.

35 U.S.C. §102 Rejection

Claims 1-7, 11, 42 and 43 were rejected under 35 U.S.C. §102(e) as being anticipated by Engh et al. (6,482,209) ("Engh"). For reasons set forth below, Applicant respectfully submits that this rejection should be withdrawn.

As argued in a previous response, Engh only contemplates the replacement of both femoral condyles. The instant invention, as outlined in previous responses, contemplates, *inter alia*, the replacement of an articulating portion of only a single condyle. In order to clarify this, claims 1 and 43 now specifically recite "the other of the medial and lateral condyles is not provided with an affixed articulating surface operative as a weight bearing surface".

As Engh and the cited prior art do not suggest or teach affixing an articulating surface operative as a weight bearing surface throughout the normal range of motion of the joint for only one condyle, the other condyle not provided with an affixed weight bearing surface, claims 1 and 43 are patentable over Engh. As claims 2-7, 11, and 42 depend from claim 1, these dependent claims necessarily include all the elements of their base claims. Accordingly, Applicant respectfully submits that the dependent claims are allowable over the cited references at least for the same reasons.

In light of the foregoing, Applicant requests reconsideration and withdrawal of the section 102 rejection.

35 U.S.C. §103 Rejection

Claims 8, 14, and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Engh in view of Hughes (6,589,248) (“Hughes”). For reasons set forth below, Applicant respectfully submits that this rejection should be withdrawn.

Hughes

Hughes discloses a device comprising “two components—a baseplate and a mobile component which is preferably magnetically attached to the baseplate. During a surgical procedure to replace the knee, the baseplate is temporarily attached to the back of the patella. The baseplate may contain spikes or prongs to secure it to the patella. The baseplate further includes a series of slots for marking the patella. The mobile component resembles a patella and is placed on the baseplate. The patella with the alignment device in place is then placed in position on the knee and trialed. Because the mobile component is free to move on the baseplate, it finds the position that is most amenable to a natural knee movement. The alignment device is then exposed and the patella is marked at the position of the mobile component. Since the baseplate contains a series of slots, the patella can be easily marked at several locations around the mobile component. The entire patella alignment assembly is then removed and the final prosthetic device can be inserted at the marked location.” (Abstract). There is also the possibility of making the device of ceramic or plastic and using sliding grooves for the moving component. (C4,L5-7).

Hughes is thus directed to aligning a knee replacement component during implantation, using either a magnet or sliding plastic or ceramic grooves. In either embodiment, opposing forces are confined to a single side of a pair of articulating surfaces during implantation, and are never used or suggested to repel opposing articulating surfaces, and are not used after implantation is complete. Rather, magnetism is only suggested for facilitating alignment of a component to be placed on one side of a pair of articulating surfaces, and only during surgery.

Accordingly, Hughes does not suggest or teach “articulating surfaces are magnetically charged to repel each other to promote smooth gliding of the respective surfaces after surgery”, as now provided in claims 8, 14, and 29. Support for this may be found, at least, in paragraph [0679] of the specification.

As a combination of Engh and Huges does not disclose or suggest all claimed elements of claims 8, 14 and 29, Applicant respectfully submits these claims are allowable over the cited references.

In light of the foregoing, Applicant requests reconsideration and withdrawal of the section 103 rejection.

Allowable Subject Matter

Applicant acknowledges with appreciation that claims 9-10, 12-13, 15-28, and 30-41 were allowed.

Conclusion

In the light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fees are believed to be due. However, please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 780-A03-012D).

Respectfully submitted,

/ Gary S. Winer /

Gary S. Winer, Reg. #31,806
for Paul Bianco, Reg. #43,500

Customer Number: 33771
FLEIT GIBBONS GUTMAN BONGINI & BIANCO, P.L.
21355 East Dixie Highway, Suite 115
Miami, Florida 33180
Tel: 305-830-2600; Fax: 305-830-2605; pbianco@fggbb.com